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17 *Attorneys for Defendant/Third-Party Plaintiff Brasscraft Manufacturing Company*

18 **UNITED STATES DISTRICT COURT**

19 **DISTRICT OF NEVADA**

20 AMICA MUTUAL INSURANCE  
21 COMPANY, a/s/o Sarkis Tabakian and  
22 Kohar Tabakian,

23 Case No.: 2:18-cv-01386-JCM-CWH

24 Plaintiff,

25 **STIPULATED CONFIDENTIALITY  
26 AND PROTECTIVE ORDER**

27 vs.

28 BRASSCRAFT MANUFACTURING  
COMPANY and Does I through X, inclusive,

29 Defendant.

30 BRASSCRAFT MANUFACTURING  
31 COMPANY,

32 Third-Party Plaintiff,

33 vs.

34 ACCUFLEX INDUSTRIAL HOSE LTD,

35 Third-Party Defendant.

36 This Stipulated Confidentiality and Protective Order (“Protective Order”) is stipulated  
37 and entered into by and between Defendant Brasscraft Manufacturing Company (“BrassCraft”)

1 and Plaintiff Amica Mutual Insurance Company (“Amica”), by and among the undersigned  
2 counsel, acting for, on behalf of, and with the express authorizations and approval of BrassCraft  
3 and Amica (each a “party” and, collectively, the “parties”). The parties, subject to the approval  
4 of this Court, stipulate and agree that the following Protective Order shall govern the handling of  
5 documents and materials, including but not limited to deposition testimony, deposition exhibits,  
6 interrogatory responses, admissions, documents produced, tangible things, and any other  
7 information produced, given, or exchanged by and among the parties and any non-parties to the  
8 above-captioned litigation through formal or informal discovery.

9 WHEREAS, on July 2, 2018, Amica filed a Complaint against BrassCraft contending  
10 that it is entitled to recover damages from BrassCraft due to an alleged defective BrassCraft  
11 product installed in its insured’s residence that allegedly caused water damage to the residence  
12 and personal property therein. BrassCraft thereafter filed a Third-Party Complaint against  
13 Accuflex Industrial Hose, Ltd. (“Accuflex”) contending that the product’s alleged failure, if any,  
14 was due to a defective part within the product manufactured and supplied to BrassCraft by  
15 Accuflex.

16 WHEREAS, disclosure and discovery activity in this action are likely to involve  
17 production of confidential, proprietary, or private business information, including without  
18 limitation product design and manufacturing schematics, for which special protection from  
19 public disclosure and from use for any purpose other than prosecuting this litigation may be  
20 warranted.

21 WHEREAS, the parties have an interest in preserving and maintaining the  
22 confidentiality of any confidential, proprietary, and/or private business information from public  
23 view or dissemination.

24 NOW, THEREFORE, the undersigned counsel, BrassCraft, and Amica hereby stipulate  
25 and petition this Court as follows:

26 A. Definitions

27 1. “Document,” whether used in the singular or plural, means any document or  
28 electronically-stored information as set forth in the Federal Rules of Civil Procedure.

1       2.     “Designating Party” means a party or third-person that produces information in  
2 discovery that is deemed “Confidential” pursuant to this Order.

3       3.     “Confidential Information” means any information that is designated as such by a  
4 Designating Party. Information may be designated “Confidential” only if the Designating Party  
5 has a good-faith basis for believing the information: (a) is confidential under federal or state law  
6 or regulations; or (b) contains sensitive personal, financial, or professional information that is  
7 generally unavailable to the public and that, if made available to the public, may be injurious to  
8 that party’s personal, financial, or professional interests.

9       4.     “Filing Party” shall mean any party who seeks to file with the Court documents or  
10 other papers reflecting information designated as “Confidential Information.”

11       5.     “Receiving Party” shall mean any party who receives documents or other papers or  
12 items reflecting information designated as “Confidential Information.”

13       6.     “Privilege” shall mean the attorney-client privilege, the attorney work-product  
14 doctrine, or any other legally-recognized privilege, doctrine, or protection that may apply to  
15 documents or information in this case.

16       B.     Use of Confidential Information

17       1.     Any and all Confidential Information produced or exchanged in the course of this  
18 litigation shall be treated as confidential and shall be used solely for the prosecution and defense  
19 of this litigation and for no other purpose. No Confidential Information shall be revealed,  
20 disclosed, or made available for inspection and copying to any person who is not permitted to  
21 see it pursuant to the terms of this Order without express written consent of the Designating  
22 Party. Before receiving access to any of the Confidential Information, each person described in  
23 Paragraphs 2(f) through 2(j) shall execute an agreement to be fully bound by this Protective  
24 Order in the form of Exhibit A, attached hereto.

25       2.     Except as specifically provided for in this Protective Order or subsequent orders of  
26 this Court, discovery materials designated “Confidential” or their contents shall not be revealed,  
27 disclosed, or otherwise made known to any persons, other than the following listed below. The  
28 parties and their counsel agree that the Confidential Information provided under this agreement

1 and Protective Order shall only be used to investigate, analyze, defend, and resolve the claims  
2 asserted in the above-captioned lawsuit.

- 3 a) Counsel of record in this action;
- 4 b) Employees of counsel of record in this action;
- 5 c) This Court;
- 6 d) Court reporters employed in connection with this litigation;
- 7 e) Special masters, settlement judges and/or mediators;
- 8 f) Outside vendors who are necessary to assist counsel of record in this  
9 action in the preparation and trial of this action;
- 10 g) Experts retained by counsel of record in this action;
- 11 h) Deposition witnesses;
- 12 i) Any person or entity to the extent required by operation of law, lawful  
13 subpoena, or court order; and
- 14 j) Any other person with the consent, in writing, of all parties.

15 3. Every person given access to Confidential Information shall be advised that the  
16 information is being disclosed pursuant to and subject to the terms of this Protective Order, and  
17 may not be disclosed other than pursuant to the terms thereof.

18 4. If any party intends to file with the Court or offer into evidence any document  
19 claimed to reflect Confidential Information, the Filing Party shall file a motion to seal in  
20 compliance with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*,  
21 447 F.3d 1172 (9th Cir. 2006) and the Court's electronic filing procedures provided for in Rule  
22 IA 10-5 of the Local Rules of Practice of the United States District Court, District of Nevada,  
23 which provides that,

24

- 25 (a) Unless otherwise permitted by statute, rule or prior court  
26 order, papers filed with the court under seal shall be  
27 accompanied by a motion for leave to file those documents  
28 under seal. If papers are filed under seal under prior court  
order, the papers must state on the first page, directly under  
the case number: "FILED UNDER SEAL UNDER  
COURT ORDER (ECF No.\_\_\_\_)." All papers filed under  
seal will remain sealed until the court either denies the

1 motion to seal or enters an order unsealing them.

2 (b) The court may direct the unsealing of papers filed under  
3 seal, with or without redactions, after notice to all parties  
4 and an opportunity to be heard.

5 (c) An attorney or pro se party who files a document under seal  
6 must include with the document either (i) a certificate of  
7 service certifying that the sealed document was served on  
8 the opposing attorneys or pro se parties, or (ii) an affidavit  
9 showing good cause why the document has not been served  
on the opposing attorneys or pro se parties.

10 (d) Documents filed under seal in a civil case must be served in  
11 accordance with LR IC 4-1(c).

12 *Id.* The Ninth Circuit held that there is a presumption of public access to judicial files and  
13 records, and that parties seeking to maintain the confidentiality of documents attached to non-  
14 dispositive motion must demonstrate good cause to overcome the presumption of public access.  
15 *Kamakana*, 447 F.3d at 1179. Parties seeking to maintain the secrecy of documents attached to  
16 dispositive motions, however, must demonstrate compelling reasons sufficient to overcome the  
17 presumption of public access. *Id.* at 1180. Where the sole ground for a motion to seal is that the  
18 document was designated confidential by the Designating Party and therefore subject to  
19 protection pursuant to the stipulated protective order, the Filing Party must notify the  
20 Designating Party at least seven day prior to filing the designated document with the court. The  
21 Designating Party must then make a good faith determination if the relevant standard for sealing  
22 is met. To the extent the Designating Party does not believe the relevant standard for sealing  
23 can be met, it shall indicate that the document may be filed publicly no later than four days after  
24 receiving notice of the intended filing. To the extent the Designating Party believes that  
25 relevant standard for sealing can be met, it shall provide a declaration supporting that assertion  
26 no later than four days after receiving notice of the intended filing. The Filing Party shall then  
27 attach that declaration to its motion to seal the designated material. If the Designating Party  
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3    ///

1 fails to provide such a declaration in support of the motion to seal, the Filing Party shall file a  
2 motion to seal so indicating and the Court may order the document filed in the public record.<sup>1</sup>

3 5. Nothing in this Protective Order prevents use or disclosure of Confidential  
4 Information beyond its terms if the Designating Party consents to such use or disclosure, or if  
5 the Court, after notice to all affected parties, orders such use or disclosure.

6 6. This Protective Order does not in any way restrict a Designating Party's ability to  
7 use his or her own Confidential Information for any purpose.

8 7. Any non-party producing documents in this litigation may avail itself of the  
9 confidential treatment provided for in this Protective Order for its documents, information, or  
10 testimony by following the procedures provided herein. Any non-party that wishes to produce  
11 documents subject to this provision agrees to be bound by the terms and conditions of this  
12 Protective Order and agrees that any disputes or issues relating to the application, interpretation,  
13 or use of the Protective Order will be resolved in the United States District Court for the District  
14 of Nevada.

15 C. Designating Confidential Material

16 1. This Order covers information or items that the disclosing party or non-party  
17 (hereinafter, "source") designates "CONFIDENTIAL." The designation "CONFIDENTIAL"  
18 shall be limited to information and items that the source in good faith believes is privileged,  
19 proprietary, commercially sensitive, invades an employee or third-party's rights to privacy, may  
20 be injurious to that party's personal, financial, or professional interests, or for similar reasons  
21 should otherwise be subject to "CONFIDENTIAL" treatment. If only a portion of the materials,  
22 documents, items, or oral or written communications qualify for protection, the Designating  
23 Party must designate for protection only those parts of materials, documents, items, or oral or  
24 written communications that qualify. Each party or non-party that designates information or

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26 1 In the event of an emergency motion, the above procedures shall not apply. Instead, the  
27 movant shall file a motion to seal and the Designating Party shall file a declaration in support of  
28 that motion to seal within three days of its filing. If the designating party fails to timely file such  
a declaration, the Court may order the document filed in the public record.

1 items as confidential under this Protective Order must take care to limit any such designation to  
2 specific material that qualifies under the appropriate standards. Mass, indiscriminate, or  
3 routinized designations are prohibited.

4 2. Information and items that are in the public domain, including but not limited to  
5 documents presented at trial or other court proceedings publically and not under seal, may not  
6 be designated as “CONFIDENTIAL.” This provision shall not apply to any document that is in  
7 the public domain as a result of violation of any stipulation or court order with respect to such  
8 document or any information included in such document.

9 3. Designation in conformity with this Protective Order requires:

10 (a) For documents, the Designating Party shall affix “CONFIDENTIAL” to  
11 each page of the document that contains protected material. If only a  
12 portion or portions of the material on a page qualifies for protection, the  
13 Designating Party also must clearly identify the protected portions(s) by  
14 making an appropriate marking in the margins.

15 (b) For testimony given at deposition, the Designating Party identify on the  
16 record, before the close of the deposition, all protected testimony.

17 (c) For testimony given in other pretrial or trial proceedings, the Designating  
18 Party identify on the record, before the close of the hearing or other  
19 proceeding, all protected testimony.

20 (d) For information produced in some other form other than documentary and  
21 for any other tangible items, the Designating Party affix  
22 “CONFIDENTIAL” in a prominent place on the exterior of the container  
23 or containers in which the information or item is stored.

24 4. If it comes to a Designating Party’s attention that information or items that it  
25 designated for protection do not qualify for protection, the Designating Party must promptly  
26 notify all other parties that it is withdrawing the mistaken designation.

27 5. If timely corrected, an inadvertent failure to designate qualified information or  
28 items does not, standing alone, waive the Designating Party’s right to secure protection under

1 this Protective Order for such material. Upon timely correction of a designation, the Receiving  
2 Party must make reasonable efforts to assure that the material is treated in accordance with the  
3 provisions of this Protective Order.

4 D. Disputing Confidentiality Designations

5 1. If any party objects to any “Confidential” designation, that party may, after making  
6 a good-faith effort to resolve such objection with the Designating Party, move on reasonable  
7 notice for an order vacating the designation. While such application is pending, the information  
8 shall continue to be treated as Confidential pursuant to this Protective Order. This paragraph is  
9 not intended to shift the burden of establishing confidentiality, which remains at all times on the  
10 Designating Party.

11 2. By agreeing to this Stipulated Confidentiality and Protective Order, it shall in no  
12 way be viewed as a concession by any party that any document marked “CONFIDENTIAL” is  
13 confidential, nor shall this stipulation be deemed a waiver of any party’s right to challenge the  
14 propriety of a “Confidential” designation.

15 3. The parties shall not be obligated to challenge the propriety of a “Confidential”  
16 designation within any set period after receiving the designated information.

17 E. Demands by Others for Confidential Information

18 1. If any other person, organization, or governmental entity demands by subpoena or  
19 other appropriate authority the production of any Confidential Information produced to it by  
20 another party, the party receiving such demand shall immediately notify the Designating Party  
21 of such demand. At its option, the Designating Party may elect to challenge the demand and  
22 assert any applicable protections, and shall notify the person, organization, or governmental  
23 entity of its challenge within such time as required by law or required by compliance with the  
24 demand. When such a challenge is made, the party who received the demand shall not produce  
25 any Confidential Information in the absence of consent by the Designating Party or an order by  
26 the issuing court compelling production.

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1       F.     End of Litigation

2       1.     Absent written permission from the Designating Party or on further order of this  
3     Court, this Protective Order shall continue to be binding throughout and after the conclusion of  
4     this litigation, including any settlements, appeals, and subsequent proceedings.

5       2.     After this case is closed in the district court, the parties may seek the return of any  
6     documents they filed under seal.

7       3.     Within ninety (90) days after final adjudication of this case, including appeals or  
8     resolution through settlement, unless otherwise agreed to in writing by an attorney of record for  
9     the Designating Party, each party shall either: (a) assemble and return all Confidential  
10    Information, including all copies thereof, to the party that produced it; or (b) certify in writing  
11    that all such information has been destroyed, provided, however, that any other party may seek  
12    to retain on a confidential basis any files or documents containing such material: (i) as long as  
13    necessary as may be required by statute, regulation, or rule; (ii) as long as necessary in order to  
14    satisfy obligations to insurers and to make insurance recoveries. A party who seeks to retain  
15    documents pursuant to subparagraph (b) hereunder shall promptly so advise the party requesting  
16    return or destruction of such documents of its intention. Any disputes concerning the  
17    applicability of this paragraph shall be resolved by this Court.

18      G.     Miscellaneous

19       1.     Agreeing to, producing, or receiving Confidential Information or otherwise  
20     complying with this Protective Order shall not:

21           (a)    Prejudice the parties' rights to object to the production of documents they  
22              consider not subject to discovery;

23           (b)    Prejudice the parties' rights to object to the authenticity, relevance, or  
24              admissibility into evidence of any document, testimony, or other  
25              evidence;

26           (c)    Prevent the parties from agreeing to alter or waive any portion of this  
27              Protective Order with respect to any particular piece of Confidential  
28              Information; or

(d) Prevent any party from seeking from this Court a modification of this Protective Order, including, but not limited to, additional protection with respect to the confidentiality of any information.

2. In the event additional parties join or are joined in this litigation, they shall not have access to Confidential Information until the newly-joined party, by its counsel, has executed and, at the request of any party, filed with the Court, its agreement to be fully bound by this Protective Order.

3. The parties agree to be fully bound by this Protective Order pending its entry by this Court, and any violation of this Protective Order shall be subject to the same sanctions and penalties as if the Protective Order has been entered.

4. The production of material protected by the attorney-client privilege, the attorney work product doctrine, or other privilege or protection (“Protected Material”) does not waive, estop, or prevent the producing party from asserting any privilege or other ground for withholding such Protected Material in the course of discovery in this case. The parties may make documents available for preliminary review or otherwise produce documents in this case with or without any pre-production, post-production, or other review for Protected Material, and neither conducting nor foregoing such review shall form a basis to prevent a party from asserting any privilege or other ground for withholding Protected Material as provided for in this Order.

5. A producing party shall have ninety (90) days after one of its counsel in this case becomes actually aware that a specific document containing arguably Protected Material has been produced in which to request its return; otherwise, any claim of protection for the Protected Material shall be deemed presumptively waived. All such requests to return Protected Material shall be in writing to lead counsel for all parties and shall identify the produced Protected Material by Bates range(s). A producing party's counsel shall be deemed to be actually aware that Protected Material was produced at the time the producing party's counsel is served with an exhibit list for trial that specifically lists the Protected Material. If a producing party timely

1 requests the return of Protected Material, any party to which such material was produced shall,  
2 within seven (7) days after the request, delete the produced Protected Material and all data  
3 associated with such Protected Material (including images and metadata such as extracted text)  
4 from any database or document management system containing the Protected Material and  
5 associated data, return to the producing party any disk or other media containing Protected  
6 Material, return to the producing party or destroy all paper copies of Protected Material, request  
7 in writing that any third-party to whom the Protected Material was provided do the same, and  
8 provide a written certification to the producing party that the receiving party has followed such  
9 procedures. The receiving party has the responsibility to take reasonable steps to ensure that  
10 any third party to whom it provided documents produced in this litigation which a producing  
11 party later claims are Protected Material are destroyed or returned as outlined in this paragraph.  
12 If the receiving party wishes to challenge the producing party's claim of protection as to the  
13 Protected Material, the receiving party may file a motion with this Court to compel production  
14 of such Protected Material.

15 6. The parties agree, and this Court hereby orders, that production of Protected  
16 Material cannot provide a basis for any third party to seek disclosure or production of the  
17 material viewed based on waiver, abandonment, estoppel, prior disclosure, or any other theory,  
18 claim, or argument. The production of Protected Material shall not waive any claim of privilege  
19 or protection in any other federal or State proceeding.

20 7. This Protective Order may be executed in counterparts.

21 8. In the event any provision of this Protective Order shall be held to be illegal,  
22 unenforceable, or inoperative as a matter of law, the remaining provisions shall remain in full  
23 force and effect unless such construction shall substantially frustrate the purpose and intent of  
24 this Protective Order.

25 9. In the event of breach of this Protective Order, the parties expressly acknowledge  
26 that the non-breaching party shall be entitled to specific performance of the terms of this  
27 Protective Order or other injunctive relief. The parties expressly stipulate, agree, and  
28 acknowledge that an unauthorized release of the Confidential Information, is a breach of this

1 Protective Order, and that damages arising from such a breach are not adequately relieved  
2 through pecuniary compensation, are not reasonably quantifiable, and are immediately  
3 irreparable.

4 IT IS SO STIPULATED.

5 Dated this 24<sup>th</sup> day of April, 2019.

6 ALVERSON TAYLOR & SANDERS

7 By:/s/Kurt R. Bonds

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14 Counsel for Plaintiff Amina Mutual  
15 Insurance Company

16 Dated this 24<sup>th</sup> day of April, 2019.

17 ARMSTRONG TEASDALE LLP

18 By:/s/Michelle D. Alarie

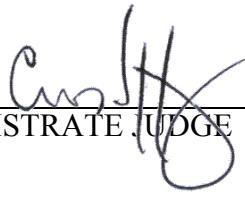
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28 Attorneys for Defendant/Third-Party Plaintiff  
Brasscraft Manufacturing Company

23 **ORDER**

24 IT IS SO ORDERED.

25   
UNITED STATES MAGISTRATE JUDGE  
26 May 1, 2019  
27 DATE: \_\_\_\_\_

**EXHIBIT A**  
**(Stipulated Confidentiality and Protective Order)**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

AMICA MUTUAL INSURANCE  
COMPANY, a/s/o Sarkis Tabakian and  
Kohar Tabakian,

Case No.: 2:18-cv-01386-JCM-CWH

Plaintiff,

VS.

BRASSCRAFT MANUFACTURING  
COMPANY and Does I through X, inclusive,

## Defendants.

## AND RELATED CLAIMS.

## ACKNOWLEDGEMENT OF PROTECTIVE ORDER

This undersigned represents that he/she, along with his or her support personnel, as applicable: (a) has received a copy of the Stipulated Confidentiality and Protective Order (“Protective Order”) in the above-captioned case; (b) has read the Protective Order and understands its provisions; (c) agrees to be bound by the terms of the Protective Order; and (d) agrees to be subject to the jurisdiction of the United States District Court for the District of Nevada for the purposes of any proceedings related to the enforcement of the Protective Order.

Date:

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**Signature**